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Item 3 of the provisional agenda*
Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 1-39

Revised draft United Nations Convention against Corruption**

III. Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement

[*Articles 19-39 were considered at the first session of the Ad Hoc Committee*]

Article 40[1]

Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to take such measures as may be necessary to limit any immunity and any jurisdictional privilege of its public officials with respect to the investigation, prosecution and adjudication of offences involving corruption under its legal system to what is strictly necessary in order to

* A/AC.261/8.

** The present document contains the draft text as revised following the first reading of the draft convention, which the Ad Hoc Committee began at its second session.

[1] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, Egypt, France, Mexico, the Netherlands, Pakistan and Turkey (A/AC.261/L.58), following the first reading of the draft text and pursuant to a request by the Chairman.

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guarantee to persons entitled to such privileges and immunities adequate protection in the exercise of their functions.[2]

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.[3]

Option 1[4]

6. States Parties shall consider the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction and the establishment of national records of persons thus disqualified from acting as directors of legal persons.

Option 2[5]

6. States Parties shall consider the possibility of disqualifying by court order or other appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from holding any office and from being elected to any office and the establishment of national records of persons thus disqualified.

Option 3[6]

6. States Parties shall consider the possibility of:

(a) Suspending from his or her post, office or functions, as a precautionary measure, for a reasonable period of time and without prejudice

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[2] Text based on the proposal submitted by France (A/AC.261/IPM/10), supported by Austria, Colombia, the Netherlands, Pakistan and Turkey.

[3] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that not only the gravity, but also the special nature of the offence should be taken into consideration.

[4] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4), supported by Colombia, France, Pakistan and Turkey

[5] New text proposed by Pakistan.

[6] New text proposed by Mexico, supported by Colombia and Turkey.

to the responsibility assigned to him or her, any public official accused of an offence under this Convention whenever, in the opinion of the competent authority, such action is advisable for the conduct or continuation of investigations and, once the necessary procedural steps have been carried out and where warranted by the gravity of the offence, disqualifying that official from occupying such a post or office or performing such functions in the public administration;

(b) Establishing a register of persons subject to such penalty or disqualification with a view to preventing them from being hired by other departments or bodies during the period of disqualification.[7, 8]

7. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials [or international civil servants]. In determining the criminal sanctions to be imposed, the national criminal courts may, in accordance with fundamental principles of their domestic law, take into account any disciplinary sanction already imposed on the same person for the same conduct.[9, 10]

8. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.[11]

9. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.[12, 13]

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[7] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the matter covered by paragraph 6 would be most appropriately dealt with in article 49. These delegations also held the view that records should be made available to other public bodies, both domestically and internationally.

[8] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed doubts about the content of this paragraph, especially in view of the fact that decisions on the scope of the future convention were still pending.

[9] Text based on the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4), supported by Colombia, France, Mexico and Pakistan. The first sentence of the paragraph is also supported by Turkey.

[10] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that this paragraph should be amended to show that a disciplinary sanction should not be regarded as precluding authorities from seeking the maximum possible sentence against a person convicted of corruption, as the imposition of disciplinary sanctions would not constitute double jeopardy.

[11] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations pointed out that this paragraph might have a bearing on article 25 and that this relationship would need to be borne in mind at the second reading of the draft text.

[12] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this matter should be dealt with elsewhere, perhaps in connection with the provisions on the protection of witnesses and victims.

[13] During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed the addition of the following two paragraphs to the text of this article (A/AC.261/L.64):

"Each State Party may, to the extent permitted by its domestic law, assign the prosecution and trial of crimes covered by this Convention to special courts, with a view to

Article 40 bis[14]

Statute of limitations

Each State Party whose domestic law provides for a statute of limitations period applicable to the offences established in accordance with articles [...] [articles on criminalization] of this Convention shall, where appropriate, apply a long statute of limitations period, which shall allow an adequate period of time for the investigation and prosecution of such offences. That period of time shall be longer in cases where the alleged offender is evading the administration of justice.[15]

[*Article 41 was deleted*][16]

Article 42[17]

Confiscation and seizure[18]

1. Each State Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

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expediting the conclusion of such cases and in the process developing the necessary expertise and specialization for dealing with such crimes.

"Each State Party shall incorporate appropriate provision in its domestic law to ensure that any public official charged with the commission of a crime covered by this Convention is not allowed to work in his or her official capacity while legal proceedings against him or her are taking place."

[14] The text of this article was submitted by Mexico at the second session of the Ad Hoc Committee, following the first reading of article 40 (A/AC.261/L.57).

[15] At the second session of the Ad Hoc Committee, Haiti expressed its support for the proposal of Mexico and suggested amending the last sentence of the article to read as follows (see A/AC.261/L.60): "That statute of limitations period shall not commence until the alleged offender's functions have been discontinued or the causes preventing any prosecution have been removed."

[16] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Mexico and Colombia withdrew their proposals for article 41 (for the text, see A/AC.261/3 (Part II), options 1 and 2, respectively). Mexico did so on the understanding that paragraph 4 would be moved to article 40, paragraph 5 would be moved to an appropriate article under chapter IV on promoting and strengthening international cooperation and that paragraph 6 would become paragraph 14 bis of article 51. The delegation of Egypt proposed a new version of article 41 (A/AC.261/L.49). However, in view of the withdrawal of the proposals of Mexico and Colombia and the subsequent deletion of the article, Egypt indicated that it would not insist on its proposals unless the Ad Hoc Committee reverted to the matter at a later stage.

[17] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, Mexico, the Netherlands, Pakistan, the Philippines and Turkey (A/AC.261/L.63), following the first reading of the draft text and pursuant to a request by the Chairman.

[18] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the title of this article should reflect the order of the process which the article describes. According to those delegations, the title should read as follows: "Freezing, seizure and confiscation".

(b) Property, equipment or other instrumentalities used in or destined[19] for use in offences covered by this Convention.[20]

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual[21] confiscation.

[3. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime and shall ensure that that property is administered by an official body established for that purpose. Such measures shall include standards relating to the return of secured property, which will remain at the disposal of the person who has a right to such property. Each State Party shall also consider measures relating to the administration and use of abandoned property, as well as respect for the time limits that result in abandonment [for example, six months,] beginning from the notification of freezing, seizure or confiscation in the case of movable property and [one year] in the case of immovable property.][22]

[4. Each State Party shall also take measures to consider and execute requests for the interim freezing and seizure of all assets of the offender, whether being kept in his or her own name or in the name of his or her friends, associates, relatives or accomplices, for a reasonable period of time pending investigation or trial and shall also establish mechanisms to consider claims by any person against the assets frozen.][23]

5. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

6. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.[24]

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[19] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed that the word "destined" be replaced with the word "intended" (see A/AC.261/L.49/Add.1).

[20] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the nature of instrumentalities would need to be examined if there was to be clarity about the breadth of the offences covered by the future convention.

[21] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to replace the word "eventual" with the word "possible" (see A/AC.261/L.49/Add.1).

[22] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations indicated that they did not support the requirement of having a single body administering forfeited funds.

[23] Text taken from a proposal made by Pakistan.

[24] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United States of America proposed that the words "at least" be inserted before the words "the assessed value", in order to clarify that, under some circumstances, intermingled legitimate funds may be an instrumentality of a related money-laundering offence and should also be subject to confiscation.

7. Income or other benefits derived from proceeds of crime,[25] from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

8. For the purpose of this article and article [...] [International cooperation for confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. [States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.[26]]

9. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with fundamental principles of their domestic law and with the nature of judicial and other proceedings.

10. The provision of this article shall not be construed to prejudice the rights of bona fide third parties.[27]

11. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.[28]

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[25] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed that the words "or other benefits derived from the proceeds of crime" be placed in parentheses and that the comma be deleted (see A/AC.261/L.49/Add.1).

[26] Text not included in the proposal of Mexico owing to the existence of article 58 on bank secrecy.

[27] During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed that this paragraph be amended to read as follows (A/AC.261/L.64): "States Parties may stipulate that the provisions of this article shall not be construed to prejudice the rights of bona fide third parties provided that any third party, upon being required so to do, is able to establish his rights."

[28] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed the insertion of an additional paragraph at the end of article 42 (for the text of the additional paragraph, see A/AC.261/L.49/Add.1).

Article 43[29, 30]

Protection of witnesses and victims[31]

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.[32]

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. In addition to paragraph 5 of article [...] [Code of conduct for public officials], each State Party shall consider the application of the measures referred to in paragraphs 1 and 2 of this article to victims and persons who report to the

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[29] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, France, Mexico, the Netherlands and Turkey, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.73). At the submission of the revised draft text, it was indicated that the proposal of France, which had previously appeared as option 2, and paragraph 6 of the proposal of Colombia, which had previously appeared as option 4 (see A/AC.261/3 (Part II)), would be discussed in the context of articles 44 and 45.

[30] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed an alternative formulation for article 43 (see A/AC.261/L.49/Add.1).

[31] During the first reading of the draft text, at the second session of the Ad Hoc Committee, in order to protect those persons called "whistle-blowers" in article 43, it was proposed (a) to amend subparagraph 1 (c) of article 13 [Civil society] to read as follows (see A/AC.261/L.73): "(c) Protection of persons who have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an offence as defined in this Convention" and (b) to add a third paragraph to article 13, as follows: "3. Each State Party shall take all appropriate measures to ensure that the bodies referred to in article 5 bis are known to the public and shall provide access to those bodies for any incidents that may be considered to constitute an offence as defined in this Convention to be reported, including anonymously."

[32] During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed the inclusion of a separate paragraph to define "whistle-blowers", to include in that category those individuals who provide information that leads to the prevention of an act of corruption and to provide effective protection for those persons from potential retaliation or intimidation (see A/AC.261/L.74).

competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an offence as defined in this Convention, without giving testimony in criminal proceedings.

Article 44[33, 34]

Consequences of acts of corruption

Option 1[35]

With due regard to the legitimately acquired rights of third [affected][36] parties and seeking the best achievement of the general interest, States Parties shall adopt, according to their domestic law, such measures as may be necessary to eliminate the consequences of acts of corruption. [In this context, States Parties may, for example, consider corruption a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession or other similar instrument.][37]

Option 2

1. Taking fully into account the legitimate rights of third parties, each State Party shall ensure that an act of corruption constitutes grounds for annulling a contract or withdrawing a concession or other similar legal instrument if it is proved that corruption had a direct or indirect effect at the time of its conclusion.[38]

2. The State Party may, at its option, withdraw any concession, rescind any contract, or recall any legal right, benefit or advantage if it is proved to have been a consequence of any act of corruption and found to be against the public interest, without incurring any obligation to provide compensation.[39]

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[33] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Mexico, which coordinated an informal working group, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.72).

[34] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to merge articles 44 and 45 into a single article which would be entitled "Civil responsibility resulting from acts of corruption" (for the full text of the proposed new article, see A/AC.261/L.49/Add.1).

[35] Proposal submitted by Spain.

[36] Proposal submitted by the United States.

[37] Proposal submitted by the United States.

[38] Text taken from the proposal submitted by Morocco (A/AC.261/L.55).

[39] Text taken from the proposal submitted by Pakistan (A/AC.261/L.54).

Article 45[40]

Compensation for damages

Option 1[41]

1. Each State Party shall ensure that its domestic law takes account of the need to combat corruption and provides, in particular, effective remedies for persons whose rights and interests are affected by corruption in order to enable them to obtain, in accordance with the principles of its internal law, compensation for damages.

2. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Option 2[42]

1. Each State Party shall adopt such legislative measures and other measures as may be necessary to ensure that persons who have suffered damage as a result of an act of corruption have the right to initiate a [legal] [civil] action against persons responsible for that damage in order to obtain full compensation.[43]

2. For the purposes of paragraph 1, the following conditions shall be fulfilled in order for the damage to be compensated:

(a) The [defendant] [offender] has intentionally committed or authorized the act of corruption;

(b) The plaintiff has suffered damage; and

(c) There is a causal link between the act of corruption and the damage.

3. Each State Party shall provide in its internal law that, if several defendants are liable for damage resulting from the same corrupt activity, they shall be jointly and severally liable.[44]

4. Each State Party shall provide in its internal law for the compensation to be reduced or disallowed, having regard to all circumstances,

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[40] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Mexico, which coordinated an informal working group, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.72).

[41] Text taken from the proposal submitted by France (A/AC.261/IPM/10).

[42] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13), as orally amended.

[43] During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed the insertion of the following additional text (see A/AC.261/L.74): "Each State Party shall provide in its internal law for any public official who suffers damage, both pecuniary and non-pecuniary, as a consequence of frivolous, mala fide, intentional or premeditated allegations of corruption against him or her which are subsequently proved false or found to be unsustainable to have the right to initiate an action in order to obtain full compensation for the damage caused by such allegations."

[44] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

if the plaintiff has by his or her own fault contributed to the damage or its aggravation.[45]

5. The compensation referred to in this article may cover material damage, loss of profits and non-pecuniary loss.

Article 46[46]

Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established by this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to the recovery of proceeds of crime.

2. Each State Party shall consider providing [in their domestic law][47] for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, [of granting immunity] from prosecution to [of exempting from criminal responsibility][48] a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article [...] [Protection of witnesses and victims] of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party [can] [wishes to][49] provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

[Article 47 was deleted][50]

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[45] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24) and from the proposal submitted by Egypt (A/AC.261/L.49/Add.1).

[46] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, France, the Netherlands and the Russian Federation, following the first reading of the draft text and pursuant to a request by the Chairman (A/AC.261/L.76).

[47] Proposal submitted by the Russian Federation.

[48] Proposal submitted by the Russian Federation.

[49] Proposal submitted by the Russian Federation.

[50] Article 47 was deleted during the first reading of the draft text, at the second session of the Ad Hoc Committee, as it was identical to article 59 of the draft text.

Article 48[51]

Cooperation with and between national authorities[52]

Each State Party shall take such measures as may be necessary to ensure that public authorities, as well as public officials,[53] cooperate, in accordance with its domestic law, with its authorities responsible for investigating and prosecuting criminal offences. Such measures may include:[54]

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with articles [...] [Criminalization of corruption involving a public official], [...] [Criminalization of corruption in the private sector] and [...] [Criminalization of money-laundering of proceeds of corruption] of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.[55]

Article 48 bis[56]

Cooperation between the private sector and national authorities

1. Each State Party shall take such measures as may be necessary to ensure, in accordance with its domestic law, strengthened cooperation between the national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, for the purpose of exchanging information relating to the commission of criminal offences covered by this Convention.

2. Each State Party shall consider, where appropriate, the establishment, in accordance with its domestic law, of an obligation for its nationals [and other persons with a habitual residence in its territory][57] to report to the national investigating and prosecuting authorities the commission of a criminal offence covered by this Convention.

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[51] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria and the Netherlands (A/AC.261/L.61), following the first reading of the draft text and pursuant to a request by the Chairman.

[52] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed the deletion of the words "with and" (see A/AC.261/L.49/Add.1).

[53] During the first reading of the draft text, at the second session of the Ad Hoc Committee, India proposed to insert the following text after the words "public officials": "as well as authorities and officials of the private sector supplying public goods and services of a nature that impinges on public welfare and interest" (see A/AC.261/L.74).

[54] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed the insertion of the words "as follows" at the end of this paragraph (see A/AC.261/L.49/Add.1).

[55] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations raised concerns about whether the formulation of this article allowed sufficient flexibility to provide for differences in legal systems, including the right against self-incrimination, which was embodied in many legal systems.

[56] Proposal submitted by the Gambia and the Netherlands at the second session of the Ad Hoc Committee (A/AC.261/L.62). The text was not considered by the Ad Hoc Committee at the first reading of the draft convention.

[57] The text appearing between square brackets was proposed by the Gambia.

Article 49[58]

Establishment of criminal record

Each State Party shall adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction[59] in another State of an alleged offender for the purpose of using such information in criminal proceedings[60] relating to an offence covered by this Convention.

Article 50[61, 62]

Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with [articles [...] [articles on criminalization] of this Convention][63] [articles [...] [Criminalization of corruption], [...] [Criminalization of obstruction of justice] and [...] [Criminalization of the laundering of proceeds of crime] of this Convention][64] [this Convention][65] when:

(a) The offence is committed [in whole or in part][66] in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.[67] [; or]

[(c) The offence is committed against the State Party; or[68]]

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[58] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (see A/AC.261/3 (Part II)).

[59] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations suggested that it was necessary to make clear that previous convictions were final convictions.

[60] During the first reading of the draft text, at the second session of the Ad Hoc Committee, one delegation proposed to add "especially in criminal investigations" after the phrase "criminal proceedings".

[61] The text of this article is a revised version submitted at the second session of the Ad Hoc Committee by Austria, Colombia, Mexico and the Netherlands (A/AC.261/L.75), following the first reading of the draft text and pursuant to a request by the Chairman. During the first reading of this article, several delegations noted that it was difficult to discuss jurisdiction in great detail until the determination of the criminal offences to be established in accordance with the future convention.

[62] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed an alternative formulation for this article (see A/AC.261/L.49/Add.1).

[63] Proposal submitted by Austria and the Netherlands.

[64] Proposal submitted by Mexico.

[65] Proposal submitted by Colombia.

[66] Proposal submitted by Austria and the Netherlands.

[67] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United States proposed that this subparagraph be moved to paragraph 2.

[68] Proposal submitted by Mexico and India.

[(c bis) The offence is committed against the affected State Party, as established in this Convention.[69]]

2. Subject to article [...] [Protection of sovereignty] of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article [...] [Criminalization of acts of corruption], paragraph [...], of this Convention and is committed outside its territory with a view to the commission of a related crime within its territory; or

(ii) One of those established in accordance with article [...] [Criminalization of the laundering of proceeds of corruption], paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article [...] [Criminalization of the laundering of proceeds of corruption], paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article [...] [Extradition] of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. A State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

[69] Proposal submitted by Colombia. Colombia will submit a further proposal defining the concept of "affected State Party".

IV. Promoting and strengthening international cooperation

Article 51[70]

Extradition[71]

1. This article shall apply to the offences covered by this Convention, where the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.[72]

2. If the request for extradition includes several separate serious crimes,[73] some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.[74]

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. [For purposes of extradition none of the offences set forth in this Convention shall be considered a political offence.][75, 76]

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[70] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (see A/AC.261/3/Part III).

[71] During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that the text of this article was almost identical to that of article 16 of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex, the "Organized Crime Convention"). On several occasions during the first reading, many delegations stressed that departure from the text of that Convention might not be advisable, in view of the fact that it was very recent and the product of considerable negotiations. According to those delegations, deviations from that text should be undertaken only when necessary due to the specific nature or requirements of the draft convention against corruption. Many other delegations pointed out that the Organized Crime Convention should be the point of departure for many provisions throughout the draft convention against corruption, but every effort should be made to improve the text and include in this convention the provisions which were necessary to deal with the multiple aspects of corruption.

[72] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed the view that "dual criminality" might not be required in the future convention if it was sufficiently clear which offences would be covered.

[73] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed the view that while the notion of "serious crime" had relevance for and had been defined in the Organized Crime Convention, it might not be appropriate in the context of this draft convention.

[74] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[75] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[76] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed that the text in square brackets be retained. Several other delegations expressed the view that it was premature to pronounce on the retention of the bracketed text because the offences to be covered by the future convention had not been defined. In the view of those delegations, the nature of the convention might make the inclusion of a political offence exception relevant.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may[77] consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour[78] to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies [solely on the ground that he or she is one of its nationals],[79] shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities

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[77] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed that the content of this paragraph become obligatory, with the substitution of the verb "shall" for the verb "may". Many other delegations held the view that caution would be advisable, in view of the fact that this formulation was identical to that of the Organized Crime Convention and had been the result of prolonged negotiation.

[78] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed the deletion of the word "endeavour". Other delegations held the view that every effort should be made not to deviate from the formulation of the Organized Crime Convention.

[79] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations proposed that the text in square brackets be retained. Several other delegations desired the deletion of the bracketed text.

shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.[80]

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence imposed under the domestic law of the requesting Party or the remainder thereof.[81]

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

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[80] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 16 of the Organized Crime Convention).

[81] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed that paragraphs 10-12 of this article be amended to read as follows (A/AC.261/L.49/Add.2):

"10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies [solely on the ground that he or she is one of its nationals,] shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its authorities in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

"11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought, the State Party seeking the extradition of the person shall agree to consider such conditional extradition or surrender sufficient to discharge the obligation set forth in paragraph 10 of this article.

"12. If extradition, sought for purposes of enforcing a sentence, is refused, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence imposed under the domestic law of the requesting Party or the remainder thereof."

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.[82]

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.[83]

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 52[84]

Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

[82] See footnote 16 above.

[83] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations proposed the deletion of this paragraph. Many delegations expressed a strong preference for its retention, as it corresponded to a provision of the Organized Crime Convention that included corruption as one of the offences to be established.

[84] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 17 of the Organized Crime Convention). There were no comments on this text during the first reading of the draft text at the second session of the Ad Hoc Committee.

Article 53[85, 86]

Mutual legal assistance[87, 88]

1. States Parties shall afford one another the widest measure of mutual legal assistance in [criminal and non-criminal][89] investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention [, as provided for in article [...] [Scope of application], granting, when appropriate, requests originating from authorities that, in accordance with its domestic law, have the power to investigate or try the acts of corruption set forth in this Convention with a view to obtaining evidence and carrying out other acts necessary to facilitate the prosecutions and proceedings pertaining to the investigation or trial of acts of corruption].[90]

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties,[91] agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article [...] [Liability of legal persons] of this Convention in the requesting State Party.

[2 bis. In accordance with applicable national legislation and the relevant agreements or arrangements that may be in force between them, States Parties shall afford one another the widest measure of assistance in the identifying, tracing, confiscating, freezing and seizing of property obtained or derived from the commission of offences established in accordance with this Convention, of property used in the commission of such offences or of proceeds of such property.][92]

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

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[85] The draft text of this article is the product of a merger of the proposals of Austria, Colombia and the Netherlands, which had previously appeared as option 1, and Mexico, which had previously appeared as option 2 (A/AC.261/L.68). The merger was carried out after the first reading of the draft text at the second session of the Ad Hoc Committee and pursuant to a request by the Chairman.

[86] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 3 (see A/AC.261/3/Part III).

[87] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations raised the issue of whether the term "mutual legal assistance" was sufficient, especially in languages other than English, to capture the scope of the assistance to be provided. It was suggested that a broader term, one which would not imply assistance in criminal matters only, might be found. In this connection, Colombia and Mexico proposed that the phrase "mutual legal assistance" be translated in Spanish as "asistencia jurídica recíproca".

[88] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Egypt proposed to regroup the paragraphs of article 53 in five sections (for the full text of the proposal, see A/AC.261/L.49/Add.2).

[89] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[90] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[91] Minor agreed change.

[92] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

(c) Executing searches and [freezing, and][93] seizures [, and freezing];[94]

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying [, freezing] or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

[(j) Identifying, freezing and tracing funds of illicit origin derived from acts of corruption;

(k) Returning such funds to their countries of origin.][95]

[4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.][96]

[5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.][97]

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

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[93] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[94] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[95] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations expressed doubt as to whether these subparagraphs should be included in this article.

[96] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[97] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.][98]

[8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.][99]

[9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.][100]

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or

[98] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[99] Mexico was of the opinion that paragraph 8 could be deleted in the light of the proposal of article 58 on bank secrecy.

[100] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. [Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.][101] [The central authorities shall be responsible for preparing and receiving the requests for assistance and cooperation to which this Convention refers.][102]

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. [In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.][103]

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

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[101] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[102] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[103] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures[104] specified in the request.

[18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.][105]

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;[106]

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[104] Minor agreed change.

[105] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[106] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations suggested consideration of an additional basis for refusing mutual legal assistance, to deal with politically motivated requests. According to those delegations, the phrase "essential

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence,[107] had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. [The requesting State Party may request information on the status and progress of measures taken by the requested State Party to satisfy its request.][108] The requested State Party shall respond to reasonable requests by the requesting State Party on progress in its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

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interests" in the text of the Organized Crime Convention was understood to allow States Parties to decline to provide assistance when a request was politically motivated. Those delegations questioned whether the same understanding would be sufficient to meet their concerns in the context of the future convention against corruption.

[107] Minor agreed change.

[108] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne. [The costs of transfer of a witness, expert or other person to the territory of the requesting State Party should be borne by the requesting State Party[109].]

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 54[110]

Transfer of criminal proceedings[111]

States Parties shall consider [the possibility of] transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.[112]

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[109] Text proposed by Mexico.

[110] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 21 of the Organized Crime Convention). During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (A/AC.261/3 (Part III)).

[111] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed that the title of this article be changed to "Communication of criminal proceedings" and that the article be amended to read as follows: "States Parties shall consider the possibility of communicating to one another proceedings for an offence covered by this Convention in cases where such communication is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved." According to the delegation of Algeria, the concept of transfer of proceedings was problematic, as it might imply abandonment of the principle of jurisdictional sovereignty. Some delegations expressed similar concerns. Some other delegations pointed out that the concept of transfer of proceedings was relatively modern and that was the reason for the non-obligatory formulation of the article. The concept of transfer of proceedings was not perceived as a threat to the sovereignty of States, but as a formula to ensure the efficient administration of justice.

[112] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that this article be amended to read as follows: "States Parties shall, in the interests of proper and expedient administration of justice, and in accordance with their domestic legislation, facilitate the transfer of criminal proceedings from one State Party to

Article 55[113]

Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

Option 1

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

Option 2[114]

(a) To establish channels of communication between their competent authorities, institutions and agencies or, where such channels exist, to improve them, in order to facilitate the secure, effective and rapid exchange of information relating to crimes of corruption and to their links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;[115]

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another for offences covered by this Convention, in particular in cases where several jurisdictions are involved." India proposed the insertion of a second paragraph, which would read as follows (see A/AC.261/L.74): "The transfer of criminal proceedings will be with the mutual consent of the concerned States Parties and in the absence of such consent the initiating State Party will continue with the proceedings until their conclusion."

[113] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 27 of the Organized Crime Convention (with slight changes)). During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (A/AC.261/3 (Part III)), following the incorporation of certain of its elements in the draft text; those elements will be given further consideration at the second reading.

[114] This subparagraph was previously subparagraph 1 (a) of article 57 and was moved here after the first reading of the draft text, at the second session of the Ad Hoc Committee, after a revision of the draft text of article 57 undertaken at the request of the Chairman (see A/AC.261/L.77).

[115] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several

[(c bis) To exchange information with other States Parties concerning specific means and methods used to commit crimes covered by this Convention, including the use of false identities, forged, altered or false documents and other means of hiding activities concerning the crimes covered by this Convention;][116, 117]

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

Option 1

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

Option 2[118]

2. States Parties shall, with a view to facilitating efficient implementation of the provisions arising from this Convention, conclude bilateral or multilateral agreements on or arrangements for direct cooperation among their respective law enforcement agencies and, where such agreements or arrangements already exist, amend them in order to increase cooperation and coordination. In the absence of such agreements and arrangements

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delegations questioned the relevance of this subparagraph, which came from the Organized Crime Convention, in view of the specific nature of this draft convention. Several other delegations were of the view that the relevance of the subparagraph remained undiminished.

116 During the first reading of the draft text, at the second session of the Ad Hoc Committee, this subparagraph, previously subparagraph 1 (d) of option 2, was inserted in the draft text in square brackets for further consideration at the second reading. Some delegations held the view that a binding requirement to negotiate such agreements would not be appropriate.

117 During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that this subparagraph read as follows: "To exchange information with other States Parties concerning specific means and methods used to commit crimes covered by this Convention, including the use of false identities, forged, altered or false documents, other means of hiding activities concerning the crimes and to provide necessary items or quantities of substances for analytical or investigative purposes."

118 This paragraph was previously paragraph 8 of article 57 and was moved here after the first reading of the draft text, at the second session of the Ad Hoc Committee, after a revision of the draft text of article 57 undertaken at the request of the Chairman (see A/AC.261/L.77).

between States Parties, this Convention shall be considered the basis for cooperation in preventing and combating corruption and related offences. Where appropriate, States Parties shall also conclude agreements and arrangements with subregional, regional and international organizations for the purpose of increasing cooperation and coordination among their respective national authorities.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention[119] committed through the use of modern technology.

Article 56[120]

Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty [and independence][121] of the State Party in whose territory such investigation is to take place is fully respected.[122]

Article 57[123]

Other cooperation measures

1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. They shall also cooperate with one another for the purpose of promoting cooperation and coordination directed towards preventing and combating corruption

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[119] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the phrase "offences covered by this Convention" was deemed to be more in line with the general formulation of this article and was thus inserted in the draft text, to replace the two alternative formulations previously contained therein (see A/AC.261/3 (Part III)).

[120] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 19 of the Organized Crime Convention). During the first reading of the draft text, at the second session of the Ad Hoc Committee, Turkey withdrew its proposal, which had previously appeared as option 2 (A/AC.261/3 (Part III)).

[121] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the addition of a reference to the independence of States would enhance the draft text. The Chairman suggested the insertion of the words in square brackets for further consideration at the second reading.

[122] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that this article read as follows: "States Parties shall conclude bilateral or multilateral agreements or arrangements in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, and their competent authorities may establish joint investigative bodies."

[123] Revised text submitted by Peru following the first reading of the draft text at the second session of the Ad Hoc Committee, pursuant to a request by the Chairman (A/AC.261/L.77).

and related offences. In particular, each State Party shall adopt effective measures and mechanisms:

[*Former subparagraph (a) appears as option 2 of paragraph 1 (a) of article 55*]

(a) To exchange information with other States Parties in connection with ongoing investigations of crimes, corruption and related offences and also during the detection of acts of corruption. To that end, States Parties shall establish, within their respective countries, a data bank containing information about institutions, officials and other persons concerned with the fight against corruption, which could be distributed and circulated to States so requesting;

[*Former subparagraphs (c) and (d) were deleted*]

(b) To compile and share analytical experiences of acts of corruption at the bilateral level and through subregional, regional and international organizations and agencies.

2. In order to facilitate and improve the efficiency of the measures and mechanisms referred to in paragraph 1 of this article, each State Party shall designate a liaison officer or responsible central official whose name and functions shall be communicated, for registration and circulation to States Parties, to the Centre for International Crime Prevention.

3. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

[*Former paragraph 4 was moved to article 5 [Preventive anti-corruption policies], where it appears as paragraph 4 bis*]

4. States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might permit or give rise to acts of corruption and related offences.

5. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences in accordance with this Convention.

6. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and combating corruption and promoting ethics and transparency in public administration, for the purpose of exchanging successful experiences and promoting transparency in public administration and the private sector by, inter alia, adopting transparent auditing and public procurement regulations and procedures.

[*Former paragraph 8 appears as option 2 of paragraph 2 of article 55*]

[*Former paragraph 9 was moved to article 5 [Preventive anti-corruption policies], where it appears as paragraph 5 bis*]

7. States Parties shall support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially ones aimed at developing countries, with a view to implementing this Convention.[124]

Article 58[125]

Bank secrecy[126]

1. The requested State Party shall not invoke bank secrecy as a ground for refusal to provide the assistance sought by the requesting State Party. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.[127]

3. States Parties shall strengthen their laws in order to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to offences covered[128] by this Convention.

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[124] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the wording of this paragraph should not be obligatory.

[125] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, South Africa proposed that paragraph 15 of article 51 be incorporated into this article and that, following such incorporation, the article be entitled "Bank secrecy and fiscal matters" and read as follows:

"1. States Parties may not refuse a request for extradition or mutual legal assistance on the sole ground of bank secrecy or on the ground that the offence is also considered to involve fiscal matters.

"2. The requested State Party shall apply this article according to its domestic law, procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

"3. The requesting State Party shall be obliged not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.

"4. States Parties shall strengthen their laws to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to the subject of this Convention."

[126] During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was considerable discussion as to whether or not the issue addressed by this article was already covered by the provision of paragraph 8 of article 53. Many delegations held the view that the matter was sufficiently important to warrant a separate provision, as it was likely to strengthen international cooperation.

[127] During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that this paragraph would need to be aligned with paragraph 19 of article 53.

[128] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the phrase "offences covered by this Convention" was deemed to be more in line with the general formulation of this article and was thus inserted in the draft text.

Article 59
Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow, as appropriate, for the use of special investigative techniques by its competent authorities in its territory and for their admissibility in court for the purpose of effectively combating corruption. Such techniques may include electronic or other forms of surveillance, undercover operations and controlled delivery.[129, 130]

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

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[129] Revised version submitted after the first reading of the draft text, at the second session of the Ad Hoc Committee, by Austria, Colombia, the Netherlands, Pakistan and Turkey, pursuant to a request by the Chairman (A/AC.261/L.70).

[130] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations questioned the relevance of controlled delivery for the purposes of the future convention. Many delegations could understand this concern but maintained that the concept of controlled delivery remained relevant and should be retained.

V. Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds[131, 132]

Article 60
International cooperation for purposes of confiscation[133]

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

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131 The draft text in this chapter had been divided into two parts. The first part contained a consolidation of the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Mexico (A/AC.261/IPM/13). The second part contained a consolidated version of the proposals submitted by Peru (A/AC.261/IPM/11) and the United States of America (A/AC.261/IPM/19). The latter was produced by Peru and the United States during the Informal Preparatory Meeting. The chapter was divided into two parts solely for reasons of presentation and had no other implication or significance. During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was extensive discussion about the architecture of this chapter. Because of the fact that the proposals of this chapter had been formulated at a time when the contents of the draft convention were not known, there might be some overlapping with other parts of the draft convention. This overlapping would need to be addressed at the second reading of the draft text, following a determination of which provisions were overlapping, and to the extent that provisions included in this chapter did not add to, or expand upon more general provisions found elsewhere in the draft convention. In this connection, it was pointed out that maintaining a separate chapter on the question of asset recovery had a considerable political significance, in view of the fact that the subject matter had been identified by the General Assembly as a key component of the convention. This political significance could not be neglected in examining the architecture and contents of the draft convention.

132 During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed that the title of this chapter read as follows: "Preventing and combating the transfer and laundering of illicit funds derived from acts of corruption and returning such funds" (A/AC.261/L.71).

133 Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 13 of the Organized Crime Convention). Austria and the Netherlands suggested that the contents of this article should offer the first elements for a solution to the problem of international cooperation in the case of transfer of embezzled public funds to a foreign country. Consideration could usefully be given to additional elements, which would, for example, accelerate procedures (priority treatment or direct contact between enforcement authorities; establishment of a clearing house; and inclusion of "abuse of power by members of the Government" as an additional offence). Colombia had proposed that this chapter contain two articles, entitled, respectively, "Prevention and combating of the transfer of funds of illicit origin derived from acts of corruption" and "Repatriation of funds derived from acts of corruption", but had not proposed a specific text (A/AC.261/IPM/14). During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations expressed the wish to retain this article, but pointed out the need to review it in conjunction with other pertinent articles of this chapter. Some delegations held the view that this article could be moved to the chapter on international cooperation.

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article [...] [Confiscation and seizure], paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, situated in the territory of the requested State Party.[134]

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article [...] [Confiscation and seizure], paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.[135]

3. The provisions of article [...] [Mutual legal assistance] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article [...] [Mutual legal assistance], paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

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[134] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the measures to be undertaken by the requested State Party should apply not only to proceeds and instrumentalities, but to the entire estate of the alleged offender, as a guarantee that any subsequent judgement, including the imposition of sanctions such as fines, would be executed.

[135] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed the addition of the following sentence at the end of this paragraph: "The requested State Party shall inform the requesting State Party of the due diligence undertaken in handling the request for confiscation throughout the duration of the procedure."

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.[136]

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.[137]

Article 61[138, 139]

Option 1[140]

Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] or [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article [...] [International cooperation for purposes of confiscation] of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime, return such proceeds

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[136] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations raised concerns about the employment of the term "sufficient", which might introduce an element of vagueness. Other delegations pointed out that the origin of the text was the Organized Crime Convention and that the employment of the same term there had not caused any conceptual problems.

[137] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the wording of this paragraph was unnecessarily obligatory. Many other delegations pointed out that the text came from the Organized Crime Convention and the obligation envisaged by the paragraph was to "consider".

[138] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed a new formulation for this article (see A/AC.261/L.80).

[139] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman requested Mexico and the Netherlands to submit a revised consolidated version of their proposals for this article for the second reading of the draft text by the Ad Hoc Committee.

[140] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 14 of the Organized Crime Convention, with a slight change to para. 2 in order to include embezzled public funds). During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations considered this option as a good basis for further consideration of this article. Some delegations pointed out that this article was closely related to articles 67 and 71 and that, therefore, the Ad Hoc Committee should consider all of these articles together at the second reading of the draft text.

of crime or property to their legitimate owners or, in the case of embezzled public funds, reimburse such public funds.

3. When acting on the request made by another State Party in accordance with article [...] [Confiscation and seizure] or article [...] [International cooperation for purposes of confiscation] of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article [...] [Other measures: implementation of the Convention through economic development and technical assistance], paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against corruption;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Option 2[141]

Disposal of confiscated proceeds of crime or property and the return of such proceeds to their countries of origin or to countries or persons authorized to receive them

1. Proceeds of crime or property confiscated by a State Party pursuant to article [...] [Confiscation and seizure] or article [...] [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

2. Each State Party shall adopt, in accordance with the fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

4. When acting on the request made by another State Party in accordance with articles [...] [Confiscation and seizure] and [...] [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing

[141] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

among themselves, without prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.

Article 62[142]

Return of property to the country of origin in cases of damage to state property

1. Notwithstanding the provisions of articles [...] [Confiscation and seizure], [...] [International cooperation for the purposes of confiscation] and [...] [Disposal of confiscated proceeds] of this Convention, each State Party shall adopt such measures as may be necessary to enable its central authorities or agencies with relevant responsibilities to return to the country of origin property constituting proceeds of crime that has been obtained to the detriment of that country.

2. In such cases, the property shall not be subject to the system of sharing between the requesting State and the requested State.

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Preamble[143, 144]

The States Parties to this Convention,

Concerned that the illicit acquisition of personal wealth by senior public officials, their families and their associates can be particularly damaging to democratic institutions, national economies and the rule of law, as well as to international efforts to promote economic development worldwide,

Recognizing that international cooperation is essential to the fight against corruption,

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[142] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was the view of the Ad Hoc Committee that this article would need to be considered in conjunction with articles 60, 61, 68 and 71 at the second reading of the draft text. Also during the first reading, Zambia proposed the deletion of this article, as it considered that its contents were adequately covered in article 61 (see A/AC.261/L.71).

[143] The text that follows is the second part of this chapter and contains a consolidated version of the proposals made by Peru (A/AC.261/IPM/11) and the United States of America (A/AC.261/IPM/19), as mentioned in footnote 131. During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was decided to number the articles in this part for ease of reference. This led to the renumbering of articles 66-75 of the draft text as it appeared in document A/AC.261/3 (Part IV). It was also decided during the first reading that the four preambular paragraphs would be moved to the preamble of the draft convention. Similarly, the provisions of the article entitled "Use of terms" would be placed in article 2 of the draft convention. However, it was pointed out that, subject to decisions regarding other preambular language and definitions, the definitions and preambular language of this proposal might not apply except in the context of this chapter. The text of the preamble and the article entitled "Use of terms" are retained here in this document for technical reasons only, as their placement as above in accordance with the decision of the Ad Hoc Committee would entail the reissuance of document A/AC.261/3/Rev.1.

[144] Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

Determined to prevent, deter and detect in a more effective manner international transfers of assets illicitly acquired by, through or on behalf of public officials and to recover such assets on behalf of victims of crime and legitimate owners,

Acknowledging the fundamental principles of due process of law in criminal proceedings and proceedings to adjudicate property rights,

Have agreed as follows:

Article 63[145]
Use of terms

For the purposes of this chapter:

(a) "Assets or property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(b) "Confiscation", which includes forfeiture where applicable, shall mean any action under domestic law resulting in the final extinguishing of title to assets of any description related to or proceeding from crime or a sum that amounts to the value of such assets and the vesting of such title in the Government pursuing the action;[146]

(c) "Illicitly acquired assets" shall mean assets or property that are acquired by, through or on behalf of a public official through misappropriation, theft or embezzlement of public funds or the unlawful conversion of state property or through acts of bribery or extortion committed by a public official and shall include other property into which such assets have been transformed or converted;[147, 148]

(d) "Requested State" shall mean a State Party that has been requested to provide assistance in identifying, freezing, seizing or recovering illicitly acquired assets;

(e) "Requesting State" shall mean a State Party that requests assistance of another State Party in identifying, freezing, seizing or recovering illicitly acquired assets;[149]

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[145] Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

[146] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this definition required clarification. Further, those delegations held the view that the concept of title passing to the State carrying out the confiscation might not be appropriate for the purpose of this chapter, as it would contradict the notion that illicitly acquired assets belonged to the State of origin. Some delegations suggested that, for the purposes of this chapter, the definition of confiscation should be extended to include return or restitution of assets.

[147] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the words "public official" should be replaced with the words "public or private official".

[148] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested a more general formulation, along the lines of "offences covered by this Convention", instead of a listing of specific offences.

[149] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many

(f) "Public official" shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, any person exercising a public function for a Government, including for a public agency or public enterprise, and any official or agent of a public international organization.[150]

Article 64[151]

General provisions[152]

1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption by adopting, inter alia, effective measures and mechanisms for:

(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption;

(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and transactions in the economic and financial systems, involving assets, including funds, of illicit origin derived from acts of corruption;

(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption and in providing the guarantees necessary for facilitating the return of such assets to their countries of origin; and

(d) States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption. When appropriate, such assistance shall also

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delegations held the view that subparagraphs (d) and (e) should be deleted, as they were unnecessary. Some delegations suggested that instead of these definitions, a definition for "affected State" should be added.

150 During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that the future convention should have a general definition for "public officials", which would apply to the entire convention. Further, some delegations suggested that reference should be made to officials of intergovernmental and non-governmental organizations, as well as to officials of associations or organizations receiving funding from the State. Zambia proposed an amended definition for "public official" and the inclusion of an additional definition for "private official" (A/AC.261/L.71).

151 The text of this article is taken from a proposal submitted by Peru (A/AC.261/IPM/11). During the first reading of the draft text, at the second session of the Ad Hoc Committee, China proposed a new formulation for this article (see A/AC.261/L.82).

152 During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations suggested that a more appropriate title was needed for this article.

include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.[153, 154]

2. States Parties shall cooperate with one another in ensuring that bank secrecy and taxation provisions do not hamper judicial and administrative cooperation in preventing and combating corruption. Accordingly, as provided for in this article, a State Party may not invoke bank secrecy in order to refuse to provide the cooperation and assistance requested by another State Party.[155]

3. For the purposes of this Convention, the recovery of assets, including funds, of illicit origin by the affected countries of origin shall be an [inalienable][156] right insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.[157, 158]

Article 65[159]

Detection [and prevention] of transfers of illicitly acquired assets

1. Each State Party shall establish, in accordance with its domestic law, appropriate oversight, investigative and prosecutorial institutions with sufficient authority to prevent and appropriately respond to the illicit acquisition of assets

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[153] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations stressed the need to specify that technical assistance would be provided only upon request.

[154] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations pointed out that there was overlap of this paragraph with other provisions of the draft convention.

[155] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations pointed out that there was overlap of this paragraph with other provisions of the draft convention.

[156] During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was extensive debate about the appropriateness of this term. Most delegations pointed out that the term had a special meaning, with legal implications which were not pertinent to this convention and proposed its deletion. Many delegations were conscious of the implications of the term, but thought it was important to have language that would establish the principle that assets and funds of illicit origin belonged to the State of origin. Mexico proposed to amend this paragraph to read as follows: "For the purposes of this Convention, States Parties whose public funds have been embezzled by means of the commission of any of the offences covered by this Convention and have been transferred abroad shall have an exclusive right to the recovery of such funds." Pakistan proposed the following reformulation of this paragraph: "For the purposes of this Convention, the title in the illicitly acquired assets derived from acts of corruption, irrespective of their location, shall be deemed to be vested in the affected State from which the assets originated, which shall have the [inalienable] fundamental right to their recovery and to obtain return or transfer of those assets."

[157] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this paragraph should become the first paragraph of the article.

[158] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the observer for the International Criminal Police Organization suggested the inclusion of a provision identifying that organization as a channel of communication.

[159] Revised text submitted by Peru and the United States after the first reading of the draft text, at the second session of the Ad Hoc Committee, pursuant to a request by the Chairman (see A/AC.261/L.79).

through the conduct of senior[160] public officials and shall endeavour to endow such institutions with adequate resources to achieve those objectives.

2. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, for financial institutions within its jurisdiction to apply enhanced scrutiny in order to improve the detection of illicitly acquired assets. Such measures shall include:

(a) Issuing advisories to financial institutions:

(i) On appropriate measures to identify current and former [senior] [designated][161] foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons;

(ii) On appropriate records to maintain on accounts and transactions involving such persons; and

(iii) On the types of transactions and accounts to which such institutions should pay particular attention;

(b) Requiring financial institutions to take reasonable steps to ascertain the identity of the nominal and beneficial owners of as well as the source of funds deposited into high-value accounts [as determined by the regulating and supervising State Party];[162]

(c) Requiring financial institutions to conduct enhanced scrutiny of high-value accounts [as determined by the regulating and supervising State Party][163] sought or maintained by or on behalf of current and former [senior] [designated][164] foreign public officials, their immediate family members, close associates and entities formed by or for the benefit of such persons. Such enhanced scrutiny shall be reasonably designed to detect transactions that may involve illicitly acquired assets and should not be construed to discourage or prohibit financial institutions from doing business with any legitimate customer; and

(d) Requiring financial institutions to report to competent authorities suspicious transactions involving accounts identified in subparagraphs (a), (b) and

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[160] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that this qualification introduced an element of vagueness, which could result in problems of interpretation and application if the term were not defined. According to those delegations, the convention should set a standard and not leave the determination of seniority to States Parties, as to do so might result in disparities that would hamper the application of the convention. Some other delegations held the view that employment of the term "senior" might result in stigmatizing a category of public officials.

[161] Differing opinions were expressed as to whether enhanced scrutiny was appropriate only for those foreign officials who exercised senior-level responsibilities, or also for a broader range of officials, which some delegations believed would be impossible to implement and could defeat the purpose of enhanced scrutiny.

[162] Some delegations expressed concern that the meaning of high-value account should be clarified with an amount or to allow for relative differences in economies.

[163] Some delegations expressed concern that the meaning of high-value account should be clarified with an amount or to allow for relative differences in economies.

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(c) of this paragraph. Such reporting requirements shall be subject to appropriate safe-harbour provisions to protect individuals and institutions from liability for complying with such reporting requirements and shall prohibit notification or disclosure of the report to legal or natural persons involved in the transaction.

3. States Parties shall [cooperate with one another][165] for the purpose of implementing appropriate and effective measures to ensure that the officials in charge of their banking and financial systems and of their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from acts of corruption by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; detecting and subsequently ordering the freezing of assets, including funds, of illicit origin derived from acts of corruption; and facilitating the recovery of such assets by their countries of origin.

4. States Parties shall [cooperate with one another][166] in ensuring that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no real existence and demand that banks in turn require from their correspondent or related banks the strict observance of policies against money-laundering such as the "know-your-client" principle and the reporting of suspicious activities.

5. States Parties shall [cooperate with one another][167] in ensuring that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records should contain information relating to the amount of the transaction, the identity and domicile of the participants in the transaction, the legal capacity of anyone participating on behalf of a legal person and the identity of the true beneficiary of the transfer in question, as well as an exact description of the transaction.

6. In connection with paragraph 5 of this article, States Parties shall [cooperate with one another][168] for the purpose of preventing fictitious companies

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[165] Some delegations believed that the verb should be more precise than the verb in brackets. Peru suggested substituting the bracketed language with "implement", "implement measures to ensure", or "aim to implement". These and other formulations should be considered further as the commitments in this article are examined in relation to those in the articles on prevention and cooperation.

[166] Some delegations believed that the verb should be more precise than the verb in brackets. Peru suggested substituting the bracketed language with "implement", "implement measures to ensure", or "aim to implement". These and other formulations should be considered further as the commitments in this article are examined in relation to those in the articles on prevention and cooperation.

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[168] Some delegations believed that the verb should be more precise than the verb in brackets. Peru suggested substituting the bracketed language with "implement", "implement measures to ensure", or "aim to implement". These and other formulations should be considered further as the commitments in this article are examined in relation to those in the articles on prevention and cooperation.

and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the true owners of assets, including funds, and that of the true beneficiaries of transactions. To that end, States Parties shall cooperate with one another in establishing uniform standards relating to the criminal, civil and administrative liability of legal persons involved in acts of corruption, including banking and financial institutions, and of the natural persons responsible for the acts of such legal persons.

7. Each State Party shall establish, in accordance with its domestic law, effective financial disclosure systems for its [senior] [designated][169] public officials and shall provide for appropriate sanctions for non-compliance. States Parties shall also consider taking such measures as may be necessary to permit their competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover illicitly acquired assets.

8. Each State Party shall adopt such measures as may be necessary, in accordance with its domestic law, to require [senior] [designated][170] public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

[*Former paragraph 9 was deleted*][171]

Article 66[172]

Financial intelligence units

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and of promoting ways and means of recovering such assets by, inter alia, establishing a financial intelligence unit that will exchange with other such units any information that it possesses.[173] If granted permission by the financial intelligence unit providing the information, the recipient financial

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[169] Differing opinions were expressed as to which officials should be covered by the financial disclosure obligations under paragraphs 7 and 8 and to whom such reports should be made.

[170] Differing opinions were expressed as to whether enhanced security was appropriate only for those foreign officials who exercised senior-level responsibilities or also for a broader range of officials, which some delegations believed would be impossible to implement and could defeat the purpose of enhanced scrutiny.

[171] The consensus was that this provision was largely duplicative of other provisions in this chapter, such as article 71 (b), and could be taken up at the time of the discussion of those articles.

[172] Revised text submitted by Peru after the first reading of the draft text, at the second session of the Ad Hoc Committee, pursuant to a request by the Chairman (see A/AC.261/L.81).

[173] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the United Kingdom of Great Britain and Northern Ireland proposed to replace the latter part of this sentence with the following: "... [a financial intelligence unit that will] be responsible for receiving, analysing and disseminating to the competent authorities disclosures of financial information which concern suspected proceeds of crime or are required by national legislation or regulation."

intelligence unit shall be able to use that information within its country, in accordance with its national legislation.[174]

Article 67[175]

Recovery mechanisms

Each State Party shall provide its competent authorities with sufficient authority, in accordance with principles of its domestic law, to provide assistance to other States Parties in the recovery of illicitly acquired assets and, to that end, shall:

(a) Adopt such measures as may be necessary to permit another State Party to initiate legal action in its courts for ownership of illicitly acquired assets that are located in its territory, by presenting either:[176]

(i) Evidence to establish title to or ownership of the assets;[177] or

(ii) A final judgement establishing title to or ownership of the assets issued by the competent authorities of another State Party, which order may be given effect in the territory of the requested State to the extent permitted by the law of that State Party;[178]

(b) Adopt such measures as may be necessary to permit its competent authorities to give effect to a final judgement of another State Party ordering the confiscation of illicitly acquired assets or the payment of a sum of money corresponding to such assets;[179]

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[174] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Zambia proposed to amend the title of the article to read "Anti-corruption intelligence units" and to amend the text of the first sentence of this article to read as follows: "States Parties shall cooperate with one another for the purpose of detecting, preventing and combating the transfer of illicit funds and assets derived from acts of corruption and in promoting ways and means of recovering such funds and assets by, inter alia, establishing anti-corruption intelligence units that will share information."

[175] During the first reading of the draft text, at the second session of the Ad Hoc Committee, China proposed a new formulation for this article (see A/AC.261/L.82). Following the first reading of the draft text, India proposed a new formulation for this article; that proposal will be made available to the Ad Hoc Committee for the second reading of the draft text.

[176] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that there were many issues involved when the State was the plaintiff, such as questions of procedure, evidence and immunities.

[177] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations proposed that the formulation of this subparagraph should be amended to cover other rights, in addition to ownership, and to introduce the concept of allowing for legal action to commence on the basis of reasonable evidence leading to a presumption of title or ownership.

[178] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations were concerned that the clause "to the extent permitted by the law of that State Party" entailed the risk of obliging the State Party to prove the validity of the judgement in the courts of the requested State Party.

[179] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that the formulation of this subparagraph was not clear. Those delegations would face problems if the proceedings referred to in this article included civil forfeiture. Related to this matter was the lack of clarity as to whether the foreign judgement involved would be a criminal, civil or administrative one. Further, these delegations pointed out that the concept of payment introduced the notion of damages, which should be clearly defined.

(c) Adopt such measures as may be necessary to enable it to prosecute and punish the laundering of illicitly acquired assets of foreign origin and to confiscate assets pursuant to investigations or proceedings involving illicitly acquired assets of such origin;[180]

(d) Adopt such measures as may be necessary, in accordance with principles of its domestic law, to enable it, at the request of another State Party, promptly to seize, restrain or otherwise prevent any dealing in or transfer or disposal of property for which there is a reasonable basis to believe that it will be subject to recovery as illicitly acquired assets. In addition to mechanisms to preserve property in anticipation of a domestic confiscation action, such measures shall include authority to restrain assets based upon a foreign arrest or charge related to their illicit acquisition, authority to give effect to a restraining order issued by a court of competent jurisdiction in the requesting State and authority to restrain assets upon a request setting forth a reasonable basis to believe that the property will be named in a confiscation judgement in the requesting State;[181]

(e) Consider adopting such measures as may be necessary to provide for the restitution of illicitly acquired assets to the requesting State or to other victims of crimes; and[182]

(f) Consider adopting such other measures as may be necessary to facilitate the recovery of illicitly acquired assets.[183]

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[180] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations held the view that this subparagraph overlapped with article 61. Some delegations also held the view that there was no need to limit this subparagraph to the offence of laundering and it should be expanded to the predicate corruption offences.

[181] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations highlighted the importance of this subparagraph and suggested that it might more appropriately stand alone as a separate article, broken down to several paragraphs for the purpose of clarity. After the first reading of the draft text, Pakistan submitted a proposal along these lines that will be made available to the Ad Hoc Committee for the second reading of the draft text. Some delegations held the view that this subparagraph overlapped with article 53. Most delegations held the view that the subparagraph introduced measures that would function as complementary to mutual legal assistance, as envisaged in article 53, but agreed that the two provisions should be brought into line with each other in order to avoid problems in their interpretation that could diminish their effectiveness.

[182] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations held the view that the inclusion of reference to other victims ran contrary to the notion that assets should be returned to the State. It would then be up to that State to receive and process claims of natural or legal persons, or other States, which claimed a right in respect of the assets in question. Further, many delegations expressed their discomfort with the use of the term "restitution", which might not be equivalent to return. In any event, those delegations stressed the need to review carefully the terminology used in order to standardize it and avoid the uncertainty created by the interchangeable employment of different terms to describe what appeared to be the same concept.

[183] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations proposed that the formulation of these subparagraphs should be amended to make them more binding.

Article 68[184]

Special cooperation provisions

1. In addition to the provisions established in chapter IV [Promoting and strengthening international cooperation] of this Convention, States Parties shall afford one another the widest measure of assistance in the recovery of illicitly acquired assets in accordance with their domestic laws and, as may be appropriate, through the exercise of authority pursuant to this article.

2. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences, with a view to facilitating the recovery of assets, including funds, of illicit origin derived from acts of corruption.[185]

Confiscation and other measures

3. Following a request made pursuant to this chapter, a State Party in which illicitly acquired assets are situated shall:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation consistent with article [...] [Recovery mechanisms], paragraph [...], of this Convention and, if such order is granted, give effect to it; or[186]

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting State consistent with article [...] [Recovery mechanisms], paragraph [...], of this Convention; or

(c) Submit a request for provisional measures to its competent authorities consistent with article [...] [Recovery mechanisms], paragraph [...], of this Convention; or[187]

(d) Take such other measures as may be permissible under its domestic law to effect the recovery of such assets.

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[184] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations pointed out that there was significant overlap of most of this article with other articles of the draft convention, such as articles 60 and 67. The only truly new provision was paragraph 4.

[185] Text taken from a proposal submitted by Peru (A/AC.261/IPM/11).

[186] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Algeria proposed to amend subparagraph (a) to read as follows: "Envisage measures allowing the requesting State to start at the level of competent jurisdiction and authorities of the requested State the procedure of confiscation [consistent with] ..."

[187] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Pakistan proposed the insertion of the word "expeditiously" after the word "measures" and to add the following sentence at the end of the subparagraph: "with a view to ensuring immediate action to prevent any transfer, disposal and so forth of the assets in question".

Requests for application of enhanced scrutiny

4. Upon an appropriate[188] request from another State Party, a requested State[189] shall notify financial institutions subject to its jurisdiction of the identity of current and former senior foreign public officials to whose accounts those institutions will be expected to apply enhanced scrutiny as set forth in article [...] [Detection [and prevention] of transfers of illicitly acquired assets], paragraph 2, of this Convention, in addition to those officials whom the financial institutions may otherwise identify.[190]

Spontaneous information-sharing

5. Each State Party shall adopt measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on illicitly acquired assets to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that Party under this chapter.

Article 69[191]

Contents of a request

The provisions of chapter IV [Promoting and strengthening international cooperation] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in chapter IV, requests made pursuant to this article shall contain sufficient evidence and information to support the underlying allegation, including the following:

(a) A complete description of the actions requested and of the assets to be restrained, seized or confiscated, including the location and value of the property;[192]

(b) A statement identifying the legal and natural persons whom the requesting State believes to be victims, whether public or private;

(c) A detailed statement of facts sufficient to enable the requested State to seek appropriate orders under its domestic law, including a full description of the

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[188] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations proposed the deletion of the word "appropriate".

[189] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the appropriate reference here would be to a "State Party" and not to a "State".

[190] During the first reading of the draft text, at the second session of the Ad Hoc Committee, many delegations reiterated the comments they had made during the discussion of article 65 about the use of the qualification "senior".

[191] During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was noted that this article overlapped with a number of other provisions, including with article 60. That duplication should be taken into consideration at the second reading of the draft text.

[192] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Pakistan proposed the following alternative formulation for this subparagraph:

> "A complete description of assets, properties and funds sufficient to identify them and wherever possible indication of their location and estimated value, for the purpose of seizure, restraint and confiscation."

illegal activity and its relationship to the assets to be seized, restrained or confiscated;

(d) In the case of a request pertaining to the enforcement of a foreign judgement or restraining order pursuant to article [...] [Recovery mechanisms], subparagraph (b), of this Convention, a legally admissible copy of an order of the requesting State upon which the request is based, information as to the extent to which execution of the order is requested, a statement specifying the measures taken to provide adequate notification to third parties and to ensure due process and, if involving an order of confiscation, an attestation by the competent authority of the requesting State that the confiscation order is final, enforceable and not subject to ordinary means of appeal; and

(e) Such additional information as the requested State may require.

Article 70[193]

Option 1[194, 195]

Limitations on cooperation

1. The execution of measures pursuant to this chapter shall be in conformity with principles of due process and shall not prejudice the rights of bona fide third parties.

2. The execution of any cooperation measure under this chapter may be refused or provisional measures lifted if:

(a) The request is not made in conformity with the provisions of this chapter;

(b) The requested State considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) The requested State does not receive sufficient or timely evidence regarding the underlying offences; or

(d) The illicit acts constitute minor offences or the illicitly acquired assets are of a *de minimis* value.

3. Before lifting any provisional measure taken pursuant to this chapter, the requested State shall, wherever possible, give the requesting State an opportunity to present its reasons in favour of continuing the measure.

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[193] After the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman asked Peru and the United States to make an effort to reformulate this article, drawing inspiration from article 18 of the Organized Crime Convention. The Chairman also reiterated the provisional nature of discussions during the first reading of the draft text.

[194] Text taken from the proposal submitted by the United States (A/AC.261/IPM/19).

[195] During the first reading of the draft text, at the second session of the Ad Hoc Committee, a number of delegations expressed their preference for option 1 of this article. Those delegations pointed out that asset recovery was an issue of international cooperation, to which basic grounds of refusal would apply. Further, it was important for those delegations to ensure the protection of bona fide third parties and that there would be some time limit for the pursuit of cooperation requests.

Option 2[196, 197]

States Parties shall not be entitled to refuse to cooperate with one another and shall accordingly afford mutual assistance with a view to expediting and providing guarantees in respect of proceedings initiated for the purpose of bringing about the return of assets, including funds, of illicit origin derived from acts of corruption to their countries of origin after being transferred. States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.

Article 71[198]

Disposition of assets

1. Illicitly acquired assets recovered pursuant to this chapter shall be disposed of in accordance with domestic law. When acting on the request of another State Party under this chapter, States Parties shall, to the extent permitted by domestic law:

(a) Give priority consideration to transferring the recovered assets in such a manner as to compensate the victims of the crime or to return the assets to their legitimate owners;

(b) Where appropriate, consider requiring that all or a portion of the recovered assets be used to support anti-corruption initiatives and programmes;

(c) Where appropriate, consider sharing confiscated assets with foreign authorities that assisted in the investigation, prosecution or judicial proceeding leading to the confiscation;

(d) Where appropriate, the requested State may deduct reasonable expenses incurred in the investigation, prosecution or judicial proceeding leading to the recovery of illicitly acquired assets prior to transferring or sharing such recovered assets pursuant to this chapter.

2. Each State Party shall adopt such measures as may be necessary to establish, consistent with principles of its domestic law:

(a) A mechanism for the consideration of claims by another State Party against illicitly acquired assets involved in a confiscation proceeding; and

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[196] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[197] During the first reading of the draft text at the second session of the Ad Hoc Committee, a number of delegations expressed their preference for option 2. Those delegations pointed out that the formulation of option 1 and the many vague terms used therein created obstacles to cooperation and entailed the risk of diminishing the effectiveness of the other articles of this chapter. According to those delegations, refusal to cooperate should be an exception.

[198] Following the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman requested delegations to engage in informal consultations in order to revise this article, in conjunction with articles 61 and 62, for the purposes of the second reading of the draft text. As in the case of articles 61 and 62, several delegations expressed the view that recovered assets should be returned to the requesting State and that the matter of the disposal of those assets should be left to that State. Following the first reading of the draft text, Pakistan submitted a proposal for an alternative formulation of this article. That proposal will be made available to the Ad Hoc Committee for the second reading of the draft text.

(b) Authority to share confiscated assets with foreign authorities in recognition of assistance provided that leads to confiscation.

Article 72[199]

Additional provisions

1. If a State Party elects to make the taking of the measures referred to in this chapter conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

2. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken and to facilitate the disposition of assets pursuant to this chapter.[200]

3. Each State Party shall furnish copies of its laws and regulations that give effect to this chapter and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

4. In order to facilitate the recovery of assets, including funds, derived from acts of corruption, States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.[201]

5. States Parties shall promote training and technical assistance among States Parties, international and regional bodies and private institutions with the objective of facilitating international cooperation and the identification and recovery of illicitly acquired assets. Such assistance should also aim to enhance the ability of States Parties to meet the requirements of article [...] [Contents of a request] of this Convention.

6. States Parties shall, in conformity with their respective legal systems, afford one another the widest measure of technical assistance in preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and in the recovery of such assets by their countries of origin through the promotion of the mutual exchange of relevant experience and specialized knowledge.[202]

7. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and promoting the recovery of such assets by their countries of origin. Those programmes shall be concerned with:

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[199] During the first reading of the draft text, at the second session of the Ad Hoc Committee, it was pointed out that the provisions of this article had been included in the original proposal in order to make it complete, but they overlapped with other provisions of the draft convention. Consequently, there was agreement that the provisions of this article should be merged with other provisions covering the same issues.

[200] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations pointed out that this paragraph should not be mandatory.

[201] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[202] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

(a) Detection and freezing of transfers of assets, including funds, of illicit origin derived from acts of corruption;

(b) Surveillance of the movement of assets, including funds, derived from acts of corruption and of the methods used to transfer, conceal or disguise such assets;

(c) Appropriate and efficient judicial and administrative mechanisms and methods for facilitating the repatriation of assets, including funds, of illicit origin derived from acts of corruption.[203, 204]

VI. Technical assistance, training and collection, exchange and analysis of information

Article 73

Collection, exchange and analysis of information on the nature of corruption

Option 1[205]

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in corruption and criminal acts related specifically to corruption in its territory, the circumstances in which these offences are committed, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning corruption and criminal acts related specifically to corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and measures to combat corruption and criminal acts related specifically to corruption and making assessments of their effectiveness and efficiency.[206]

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[203] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[204] During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations suggested that the words "acts of corruption" should be replaced with the words "offences covered by this Convention" throughout the text of this article, for reasons of consistency with other provisions of the draft convention.

[205] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4) (art. 28 of the Organized Crime Convention (with slight changes)). During the first reading of the draft text, at the second session of the Ad Hoc Committee, there was general preference for this option as the basis for the second reading of the draft text. Many delegations were in favour of finding an appropriate way of incorporating elements of paragraph 4 of option 2 into this option, even though for some delegations it was necessary to clarify what was meant by "civil society" and to ensure that there was no overlapping with article 13. There was also considerable discussion about paragraph 5 of option 2 (see the footnote to that paragraph for details).

[206] The formulation of this paragraph was amended during the first reading of the draft text, at the second session of the Ad Hoc Committee, in order to remove any possible ambiguity created by the word "monitoring" and to clarify that the action required was incumbent upon each State Party.

Option 2[207]

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, the circumstances in which corruption operates, as well as the groups, individuals and forms and means involved.

2. States Parties shall consider developing and sharing analytical expertise concerning acts of corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and measures to combat corruption and making assessments of their effectiveness and efficiency.

4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of deterring, detecting, investigating and punishing acts of corruption. To that end, they shall promote the exchange of information on best practices and successful experience through agreements and meetings of their competent bodies and institutions with a view to publicizing mechanisms for administrative improvements and measures to combat corruption and shall devote special attention to ways and means of enabling civil society to participate in the fight against corruption.[208]

5. States Parties shall consider establishing a centre for the dissemination of information on best practices to combat corruption. The centre would be responsible for requesting, receiving, collecting, administering, informing and disseminating successful experience in the fight against corruption. It would also be responsible for informing States Parties of the activities and progress in the measures referred to in paragraphs 1 to 4 of this article. States Parties shall consider making Mexico City the headquarters of the centre.[209]

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[207] The first three paragraphs of this option contain consolidated text taken from the proposals submitted by Mexico (A/AC.261/IPM/13) and the Philippines (A/AC.261/IPM/24). Following the first reading of the draft text, at the second session of the Ad Hoc Committee, and after the discussion reflected in the footnotes to option 1 above and paragraph 5 of option 2 below, Mexico proposed the insertion of a new article, article 73 bis, which would be entitled "Citizen participation" and would read as follows: "States Parties shall promote and facilitate citizen participation, in conformity with their domestic legislation, in the design of policies for the fight against corruption, in the application of monitoring and evaluation mechanisms and in the elaboration of studies on the causes and effects of corruption." The proposed new article would supersede option 2.

[208] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[209] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, most delegations were not favourable to the establishment of a new entity, as foreseen in this paragraph. Those delegations held the view that doing so would entail the risk of diluting resources available for technical cooperation. Further, the functions that the entity would perform according to the proposal fell within the mandate of the Centre for International Crime Prevention of the Office for Drug

Article 74[210]

Training and technical assistance

1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of technical assistance, especially for the benefit of developing countries, in the prevention, detection, investigation and punishment of acts of corruption and related offences by exchanging relevant experience and specialized knowledge and providing one another with all types of material, technical and other support used, in particular, in their respective national programmes and plans for combating corruption.[211]

Option 1[212]

2. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) [Routes and][213] techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Detection and monitoring of the movement of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(c bis) Monitoring of the movement of contraband;[214]

(d) Collection of evidence;

Control and Crime Prevention. In addition, the proposal seemed to be duplicating and to some extent contradicting proposals under consideration in connection with the secretariat of the proposed body for monitoring implementation of the convention. The Chairman suggested that the functions foreseen in this paragraph could be borne in mind when considering the formulation of the latter proposals.

[210] Revised text, consolidating all previous options for this article, submitted by the authors of those options after the first reading of the draft text at the second session of the Ad Hoc Committee.

[211] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[212] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14), Mexico (A/AC.261/IPM/13), the Philippines (A/AC.261/IPM/24) and Turkey (A/AC.261/IPM/22).

[213] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Turkey (A/AC.261/IPM/22).

[214] Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24).

(e) Control techniques in free trade zones and free ports;[215]

(f) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;[216]

(g) Methods used in combating corruption and criminal acts related specifically to corruption, committed through the use of computers, telecommunication networks or other forms of modern technology; and

(h) Methods used in the protection of victims and witnesses [, persons who report offences, informers and experts].[217]

Option 2[218]

2. Each State Party shall formulate, develop or upgrade training programmes designed specifically for personnel responsible for preventing and combating corruption, including prosecutors, judges and police officers. Those programmes, which could include secondments and internships, shall be concerned with:

(a) Identification of acts of corruption with a view to their subsequent punishment;

(b) Effective measures employed in the prevention, detection, investigation, punishment and control of acts of corruption and related offences;

(c) Gathering of evidence and investigative methods;

(d) Methods used in protecting victims and witnesses who cooperate with the judicial authorities.

2 bis. States Parties shall assist one another in the conduct of evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries with a view to formulating national strategies and action plans for combating corruption with the participation of national authorities and civil society.[219]

3. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use subregional, regional and international conferences and seminars to promote cooperation [and technical assistance][220] and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

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[215] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Turkey (A/AC.261/IPM/22).

[216] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Turkey (A/AC.261/IPM/22).

[217] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[218] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[219] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[220] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

Option 1[221]

4. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

Option 2[222]

4. States Parties shall promote technical assistance activities that facilitate extradition and mutual judicial assistance. Such technical assistance could include secondments or internships of personnel arranged between central authorities or agencies responsible for preventing and combating corruption and also training in national and international regulations, comparative legislation and languages.

Option 1[223]

5. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Option 2[224]

5. Within the framework of other relevant bilateral and multilateral agreements or arrangements, States Parties shall endeavour to optimize the training activities being organized in this sphere, in particular those conducted under the auspices of subregional, regional and international organizations.

6. States Parties shall study voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition in applying this Convention through technical assistance programmes and projects.[225]

7. States Parties shall make voluntary contributions to the Centre for International Crime Prevention for the purpose of fostering, through the

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[221] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14), Mexico (A/AC.261/IPM/13), the Philippines (A/AC.261/IPM/24) and Turkey (A/AC.261/IPM/22).

[222] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[223] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14), Mexico (A/AC.261/IPM/13), the Philippines (A/AC.261/IPM/24) and Turkey (A/AC.261/IPM/22).

[224] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[225] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

Centre, programmes and projects in developing countries with a view to the implementation of this Convention.[226]

Article 75[227]

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption and criminal acts related specifically to corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption and criminal acts related specifically to corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. [States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention];

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation

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[226] Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

[227] Text revised by Austria, Colombia and the Netherlands, submitted at the request of the Chairman following the first reading of the draft text, at the second session of the Ad Hoc Committee (A/AC.261/L.86).

provided for by this Convention to be effective and for the prevention, detection and control of corruption and criminal acts related specifically to corruption.[228]

VII. Mechanisms for monitoring implementation[229]

Article 76
Conference of the Parties to the Convention

Option 1[230]

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat and eradicate corruption and to promote and review the implementation of this Convention through a systematic follow-up programme.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall:

(a) Conduct annual multilateral evaluations for the periodic review of the implementation of this Convention;

(b) Make recommendations to improve its implementation;

(c) Facilitate the exchange of information among States Parties;

(d) Encourage the mobilization of voluntary contributions to finance the systematic follow-up programme; and

(e) Promote the establishment of a fund to assist least developed countries in the implementation of this Convention.

3. Each State Party shall provide the Conference of the Parties with the information that it requires for the systematic follow-up programme concerning its programmes, plans, practices and results, as well as information on legislative and administrative measures adopted to implement this Convention.

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[228] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

[229] During the first reading of the draft text, at the second session of the Ad Hoc Committee, Austria and the Netherlands submitted a proposal containing five articles for this chapter (see A/AC.261/L.69). Norway submitted a proposal containing amendments to one of the articles proposed by Austria and the Netherlands (see A/AC.261/L.78). Egypt proposed to add the following paragraph to article 76: "The Conference of the Parties shall establish any subsidiary body it deems necessary for the effective implementation of the Convention" (A/AC.261/L.87). Peru proposed to add the following paragraph to article 76: "The Conference of the Parties shall have, as subsidiary bodies, two committees, one for evaluation and the other for cooperation and technical assistance, whose functions shall be established at the first meeting of the aforementioned Conference of the Parties" (A/AC.261/L.83). It was understood that the Ad Hoc Committee would consider all proposals during the second reading of the draft text.

[230] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Option 2[231]

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat corruption and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article, including rules concerning payment of expenses incurred in carrying out those activities.

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles [...] [Training and technical assistance], [...] [Other measures: implementation of the Convention through economic development and technical assistance] and [...] [Prevention] of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Option 3[232]

States Parties shall establish an organ authorized for the required supervision and review of the effective implementation of this Convention.

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[231] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[232] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22). Turkey suggested that the formulation of this article should take into account other international conventions, especially the Organized Crime Convention.

Article 77[233]

Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article [...] [Conference of the Parties to the Convention] of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article [...] [Conference of the Parties to the Convention], paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

VIII. Final clauses[234, 235]

Article 78[236]

Implementation of the Convention

Option 1[237]

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

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[233] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

[234] Austria and the Netherlands proposed that this chapter contain articles entitled "Signature and accession", "Ratification and depositary", "Entry into force", "Amendment" and "Denunciation" but indicated that the text should be completed at a later stage (A/AC.261/IPM/4).

[235] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the Chairman recalled the decision of the Ad Hoc Committee to consider the proposed preamble to the draft convention at the end of the negotiating process, possibly together with the final clauses. However, the Chairman suggested that, for reasons of consistency and in view of the fact that some delegations had made proposals for the final clauses, the Ad Hoc Committee should proceed with a first reading of this chapter on the understanding that its content and the final formulation of its provisions would need to be reviewed once agreement had been reached on the formulation of other provisions of the draft convention.

[236] This article was moved from the previous chapter, to become the first article of chapter VIII of the draft convention, pursuant to a proposal made by Colombia during the first reading of the draft text, at the second session of the Ad Hoc Committee (see A/AC.261/L.85) and accepted by the Ad Hoc Committee.

[237] The first paragraph contains consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and the Philippines (A/AC.261/IPM/24). Paragraphs 2 and 3 contain text taken from the proposal submitted by Colombia.

2. The offences established in accordance with articles [...] [articles on criminalization] of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of the United Nations Convention against Transnational Organized Crime, except to the extent that article 5 of that Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Option 2[238]

1. States Parties shall take the necessary measures, including legislative and administrative measures, in accordance with the principles of their domestic law, with a view to the convergence of domestic legislation,[239] in order to ensure the implementation of the obligations established in this Convention.

2. States Parties may adopt more strict or more severe measures than those provided for by this Convention for preventing and combating corruption.[240]

[238] Proposal submitted by Colombia at the second session of the Ad Hoc Committee (A/AC.261/L.85), as amended following the first reading of the draft text. Some delegations pointed out that the Ad Hoc Committee should also keep in mind the proposal on this article submitted by Austria and the Netherlands (A/AC.261/L.69).

[239] Many delegations considered this phrase redundant. Those delegations also pointed out that if the phrase were eliminated, the proposed text would be virtually identical to the proposal submitted by Austria and the Netherlands, and to that of the Organized Crime Convention, for which those delegations expressed a strong preference.

[240] India proposed that this paragraph read as follows: "States Parties may adopt legislative or administrative measures which would be more stringent than those provided for in this Convention, for preventing and combating the offences covered by this Convention and for sanctions against the offenders concerned."

Article 79[241]

Relationship to other agreements and arrangements

Option 1[242]

1. This Convention shall not affect the rights and undertakings derived from international multilateral conventions.

2. States Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more States Parties have already concluded an agreement or arrangement in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or arrangement in lieu of this Convention, if it facilitates international cooperation.

Option 2[243]

1. This Convention shall prevail over previous multilateral conventions and agreements.

2. States Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention for purposes of supplementing or strengthening its provisions or in the interests of a more effective application of the principles embodied in it.

3. If two or more States Parties have already concluded an agreement or arrangement in respect of a subject that is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall

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[241] During the first reading of the draft text, at the second session of the Ad Hoc Committee, the Philippines withdrew its proposal, which had appeared as option 2 in the previous version of the draft text (A/AC.261/3 (Part IV)). Also during the first reading, most delegations recalled the lengthy debate on the issue covered by this article during the negotiation of the Organized Crime Convention. Those delegations emphasized that the solution adopted in that Convention was not to include a specific provision on the relationship with other treaties, thereby leaving the matter to the application of the 1969 Vienna Convention on the Law of Treaties (United Nations, *Treaty Series*, vol. 1155, No. 18232). Those delegations held the view that it would be prudent to adopt a similar solution for the draft convention. Some delegations expressed the view that, as with most matters covered by the final clauses, a determination on whether to include an article on the relationship with other treaties, or on whether to foresee prevalence or subsidiarity of the future convention, was premature. It was, therefore, deemed necessary to retain the two options below for consideration during the second reading of the draft text.

[242] Text taken from the proposal submitted by France (A/AC.261/IPM/10). France indicated that the proposed provision was based on article 39 of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (United Nations, *Treaty Series*, vol. 1862, No. 31704); paragraph 1 has been slightly amended. France suggested that the aim of the provision was to maintain the commitments undertaken by States in other international instruments.

[243] Proposal submitted by Colombia during the first reading of the draft text, at the second session of the Ad Hoc Committee (A/AC.261/L.84).

be entitled to apply that agreement or arrangement in lieu of this Convention insofar as it enhances the effectiveness of its provisions.

Article 79 bis[244]

Relationship between the United Nations Convention against Corruption and its protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 80[245]

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

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[244] Proposal submitted by the United Arab Emirates during the first reading of the draft text, at the second session of the Ad Hoc Committee. A similar proposal had been made by Belarus (see A/AC.261/L.59/Add.2). It should be recalled that paragraphs 2-5 of the proposal submitted by the Philippines, which had appeared as option 2 of this article (A/AC.261/3 (Part IV)) and was withdrawn during the first reading of the draft text, contained text identical to that of this proposal.

[245] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14). During the first reading of the draft text, at the second session of the Ad Hoc Committee, some delegations expressed their preference for a formulation that would entrust settlement of disputes to the Conference of the Parties to the Convention, whose establishment was proposed in article 76. Some other delegations pointed out that the origin of this provision was the Organized Crime Convention and that, in any event, that was a standard formulation. Those delegations expressed the view that for those reasons the formulation of this article should not be amended.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 81[246]

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [...] to [...] in [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.[247]

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.[248]

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 82[249]

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [twentieth][250] [fortieth][251] instrument of ratification, acceptance,

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[246] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). The text referring to regional economic organizations was proposed by Colombia only. During the first reading of the draft text, at the second session of the Ad Hoc Committee, there were no comments on this article.

[247] Text taken from a proposal made by Colombia.

[248] The last two sentences of this paragraph were proposed by Colombia.

[249] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). The text referring to regional economic organizations was proposed by Colombia only.

[250] Proposal submitted by Colombia during the first reading of the draft text, at the second session of the Ad Hoc Committee (A/AC.261/L.84), and supported by several delegations.

[251] During the first reading of the draft text, at the second session of the Ad Hoc Committee, several delegations supported this proposal.

approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the [twentieth] [fortieth] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 83[252]

Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

[252] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). The text referring to regional economic organizations was proposed by Colombia only. During the first reading of the draft text, at the second session of the Ad Hoc Committee, there were no comments on this article.

Article 84[253]

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 85[254]

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

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[253] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). The text referring to regional economic organizations was proposed by Colombia only. During the first reading of the draft text, at the second session of the Ad Hoc Committee, there were no comments on this article.

[254] Consolidated text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13). During the first reading of the draft text, at the second session of the Ad Hoc Committee, there were no comments on this article.